



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201405038

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 04 2013

Uniform Issue List: 9100.00-00; 408A.00-00

SE: T: EP: RA: T2

Legend:

Taxpayer = ***

Custodian = ***

CPA 1 = ***

CPA 2 = ***

Attorney = ***

Amount A = ***

Amount B = ***

Amount C = ***

Independent Auditor = ***

IRA X = ***

IRA Y = ***

Year 1 = ***

Year 2 = ***

Year 3 = ***
Year 4 = ***
Year 5 = ***

Dear ***:

This is in response to your request dated March 27, 2012, submitted on your behalf, by your authorized representative, as supplemented by correspondence dated October 10, 2012, January 8, 2013, January 16, 2013, March 5, 2013, July 11, 2013, July 24, 2013, August 5, 2013, and September 11, 2013, and a conference held on January 9, 2013, in which you request relief under section 301.9100-3 of the Procedure and Administrative Regulations (the "Regulations").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer owned IRA X, a simplified employee plan ("SEP IRA") described in section 408(k) of the Internal Revenue Code (the "Code"), and maintained by Custodian. On December 24, Year 1, Custodian, at Taxpayer's request transferred Amount A from IRA X, to IRA Y, a Roth IRA described in section 408A of the Code, as a Roth IRA conversion. IRA Y is also maintained by Custodian.

Taxpayer represents that he relied heavily on CPA 1, his long time Certified Public Accountant and preparer of his Federal U.S. Individual Income Tax Returns ("Income Tax Return(s)"), for guidance with respect to his U.S. individual income tax obligations. Taxpayer consulted with CPA 1 prior to his request to convert IRA X to IRA Y. During the time of the conversion, CPA 1 represents that he advised and cautioned Taxpayer of the modified adjusted gross income ("MAGI") limitations relating to Roth IRA conversions, as provided by section 408A(c)(3) of the Code. CPA 1 also represents that at the time of the conversion he had not yet determined Taxpayer's Year 1 MAGI. Accordingly, Taxpayer represents that he was unaware that his MAGI exceeded the Roth IRA conversion MAGI limitation at the time of the conversion.

In Year 2, subsequent to the conversion, Taxpayer re-engaged CPA 1 to prepare his Year 1 Income Tax Return. CPA 1 determined that Taxpayer's MAGI was Amount B. CPA 1 did not advise Taxpayer at that time that Amount B exceeded the Roth IRA conversion MAGI limitations and that consequently his conversion from IRA X to IRA Y was a failed conversion under CPA 1 represents that he does not recall whether he reviewed the issue of Taxpayer's eligibility to convert IRA X to IRA Y during the time he prepared the Year 1 Income Tax Return. Accordingly, CPA 1 prepared Taxpayer's Year 1 Income Tax Return to include the conversion as a distribution from IRA X. Taxpayer was not informed at this time that his conversion was a failed conversion.

With respect to an unrelated tax matter, during Year 5 Taxpayer engaged CPA 2 to amend his Year 1 Income Tax Return and Attorney to work on certain aspects of his amended Year 1 Income Tax Return. CPA 2 notified Taxpayer and Attorney, at that time, that his MAGI for Year 1 of Amount B and the amended Year 1 MAGI of Amount C were both greater than the allowed MAGI to convert his SEP IRA to a Roth IRA, and therefore, his conversion from IRA X to IRA Y was a failed conversion.

Attorney reviewed Taxpayer's original and amended Year 1 Income Tax Return and concurred with CPA 2's assessment of the failed conversion. Attorney advised Taxpayer that under appropriate circumstances a letter ruling may be obtained that would grant a request of relief to make an election to recharacterize the conversion. Consequently, Taxpayer was not made aware of the failed conversion and the available election to recharacterize his Roth IRA to a traditional IRA until December of Year 5.

Taxpayer's request for relief under section 301.9100 of the Regulations was filed shortly after discovering that his conversion was a failed conversion under section 1.408A-5, Q&A-9(a)(1) of the I.T. Regulations.

In connection with this submission, Taxpayer provided a statement from Independent Auditor, who reviewed the Year 1 through Year 5 Income Tax returns and certified under penalties of perjury that the interests of the Government would not be prejudiced under the standards set forth under section 301.9100-3(c)(1)(i).

Based on the foregoing facts and representations, you have requested a ruling that, pursuant to section 301.9100-3 of the Regulations, Taxpayer may be granted a period not to exceed 60 days from the date of issuance of this ruling to make an election under section 1.408A-5 of the I.T. Regulations to recharacterize Amount A as a contribution to a traditional IRA.

With respect to your request for relief under section 301.9100-3 of the Regulations, section 408A(d)(6) of the Code and section 1.408A-5 of the I.T. Regulations provide that, except as otherwise provided by the Secretary, a taxpayer may elect to recharacterize an IRA contribution made to one type of IRA as having been made to another type of IRA by making a trustee-to-trustee transfer of the IRA contribution, plus earnings, to the other type of IRA. In a recharacterization, the IRA contribution is treated as having been made to the transferee IRA and not the transferor IRA. Under section 408A(d)(6) of the Code and section 1.408A-5 of the I.T. Regulations, this recharacterization election generally must occur on or before the date prescribed by law, including extensions, for filing the taxpayer's Income Tax Return for the year of contribution.

Section 1.408A-5, Q&A-6, of the I.T. Regulations describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount that has been converted from a SEP IRA to a Roth IRA: (1) the taxpayer must notify the Roth

IRA trustee of the taxpayer's intent to recharacterize the amount; (2) the taxpayer must provide the trustee (and the transferee trustee, if different from the transferor trustee) with specified information that is sufficient to effect the recharacterization; and (3) the trustee must make the transfer.

Section 408A(c)(3) of the Code provides, in relevant part, that a taxpayer generally is not allowed to make a rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during any taxable year if the taxpayer's adjusted gross income for that year exceeds \$100,000.

Section 408A(d)(3)(C) of the Code provides that a conversion of a SEP IRA to a Roth IRA is treated as a rollover from the SEP IRA to the Roth IRA.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the Regulations, in general, provide guidance concerning requests for relief submitted to the Internal Revenue Service (the "Service") on or after December 31, 1997. Section 301.9100-1(c) provides that the Commissioner of the Service, in his discretion, may grant a reasonable extension of the time fixed by a regulation, a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin for the making of an election or application for relief in respect of tax under, among others, Subtitle A of the Code.

Section 301.9100-2 of the Regulations lists certain elections for which automatic extensions of time to file are granted. Section 301.9100-3 generally provides guidance with respect to the granting of relief with respect to those elections not referenced in section 301.9100-2. The relief requested in this case is not referenced in section 301.9100-2.

Section 301.9100-3 of the Regulations provides that applications for relief that fall within section 301.9100-3 will be granted when the taxpayer provides sufficient evidence (including affidavits described in section 301.9100-3(e)(2)) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interests of the Government.

Section 301.9100-3(b)(1) of the Regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith (i) if its request for section 301.9100-1 relief is filed before the failure to make a timely election is discovered by the Service; (ii) if the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control; (iii) if the taxpayer failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied upon the written advice of the Service; or (v) the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1)(ii) of the Regulations provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) of the Code before the taxpayer's receipt of a ruling granting relief under this section. Section 6501(a) of the Code provides that the amount of any tax assessed shall be assessed within three years after the return required to be filed by the taxpayer was filed.

Section 301.9100-3(c)(1)(ii) of the Regulations further provides that for closed years, the Service may condition a grant of relief on the taxpayer providing the Service with a statement from an independent auditor other than an auditor providing an affidavit pursuant to paragraph (e)(3) of section 301.9100-3) certifying that the interests of the Government are not prejudiced under the standards set forth in Section 301.9100-3(c)(1)(i), which provides that the interests of the Government will be prejudiced if granting relief results in the taxpayer having less tax liability in the aggregate for all taxable years affected by the election than he would have had if the election would have been timely made (taking into account the time value of money).

The information presented and documentation submitted by Taxpayer is consistent with Taxpayer's assertion that his failure to elect to recharacterize the Roth IRA on or before the date prescribed by law, including extensions, for filing his Income Tax Return for the year of contribution, was caused by Taxpayer reasonably relying on a qualified tax professional, who failed to advise Taxpayer to make the election. Taxpayer was not made aware of the failed conversion or the election until after the tax year in question closed. Taxpayer filed this request for section 301.9100 relief shortly after discovering he had a failed conversion, and before the Service discovered his failure to make a timely election to recharacterize the failed conversion.

Based on the above, Taxpayer meets the requirements of section 301.9100-3(b)(1) of the Regulations, clauses (i), (iii), and (v) for the 2007 tax year. In addition, since the statute of limitations is closed, under section 301.9100-3(c)(1)(ii) of the Regulations, granting relief would ordinarily prejudice the interests of the Government. Taxpayer has provided a statement from an independent auditor (other than the auditors involved in the identification or correction of the failed conversion) certifying that the interests of the Government were not prejudiced under the standards set forth under section 301.9100-3(c)(1)(i) which satisfies a conditional grant of relief under section 301.9100-3(c)(1)(ii).

Accordingly, Taxpayer is granted an extension of 60 days as measured from the date of the issuance of this ruling letter to recharacterize Amount A as a contribution to a traditional IRA.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter assumes that the above IRA qualifies under either section 408 of the Code or section 408A of the Code at all relevant times.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file with this office.

If you wish to inquire about this ruling, please contact ***** (ID # ***** at () *****). Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Jason E. Levine, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of this letter
Notice of Intention to Disclose, Notice 437

Cc: ***
Cc: ***
Cc: ***